

## REMARKS

Applicant respectfully requests reconsideration of this application in view of the foregoing amendments and the following remarks. Claims 1-11 were pending in the application and were rejected in the Office Action. By way of this Amendment, claims 1, 5, and 9 have been amended and, therefore, claims 1-11 remain respectfully pending for further consideration.

### **1. Rejection of Claims 1-11**

The Examiner again rejected claims 1-11 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,384,721 ("Paielli"). For at least the following additional reasons, Applicant continues to traverse this rejection.

As amended herein, claim 1 (*i.e.*, the claim from which claims 2-4 depend) recites a method of monitoring the functionability of a brake lining. This method includes, among other possible steps (*italic emphasis added*):

measuring a value that characterizes the dielectric constant of the lining material, *wherein the lining material is provided between a first, pressing braking member and a second, pressed braking member;*  
comparing the measured value with a reference value for the lining material;  
and  
determining the functionability when the measured value is within a specific tolerance range.

Similarly, claim 5 (*i.e.*, the claim from which claims 6-8, 10, and 11 depend) has been amended to recite a brake lining that includes, among other possible things (*italic emphasis added*):

a lining material, *wherein the lining material is configured to be provided between a first, pressing braking member and a second, pressed braking member;* and  
at least two conductors (34, 36) arranged in the lining material in a way so that the conductors (34, 36) can be used to perform a capacitance measurement.

Finally, claim 9, as amended, recites a brake that includes, among other possible things (*italic emphasis added*):

a first, pressing braking member;  
a second, pressed braking member  
*a brake lining (10, 12) provided between the first and second braking members,* the brake lining comprising a brake lining material; and  
a brake lining monitoring device which is constructed so that it can determine the functionability of the brake lining (10, 12) on the basis of a change in the dielectric constant of the brake lining material.

As hereafter explained, Paielli fails to teach or suggest the method recited in claim 1, the brake lining recited in claim 5, or the brake recited in claim 9.

Claims 1, 5, and 9 recite a lining provided (or configured to be provided) *between* a first, pressing brake member and a second, pressed brake member. In contrast, Paielli's body 22 (which includes conductive plates 24, 26) is provided as part of the brake pad 42. In other words, Paielli teaches only a pressing member (brake pad 42) of which the body 22 is a part and a separate pressed member (brake rotor 48). As a result, Paielli fails to teach or suggest the three distinct elements recited in claims 1, 5, and 9, *i.e.*, in order of connectivity, a first pressing member, a brake lining, and a second pressing member.

In light of the foregoing, it is clear that Paielli fails to teach or suggest at least the above-italicized limitations of claims 1, 5, and 9. Accordingly, Paielli can not be used to reject claims 1, 5, and 9, or any claim dependent thereon, under 35 U.S.C. § 102(e). Moreover, as claims 2-4 depend from claim 1 and as claims 6-8, 10, and 11 depend from claim 5, each of these dependent claims is also allowable over Paielli, without regard to the other patentable limitations recited therein. Therefore, a withdrawal of the rejection of claims 1-11 under 35 U.S.C. § 102(e) for anticipation by Paielli is both warranted and earnestly solicited.

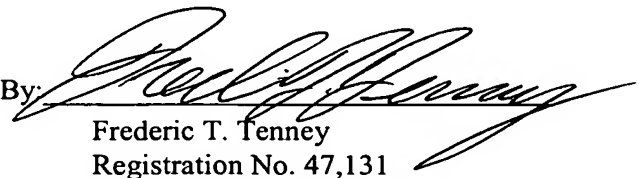
## 2. Conclusion

In light of the foregoing, claims 1-11 are in condition for allowance. If the Examiner believes that a telephone conference will be useful to move this case forward toward issue, Applicant's representative will be happy to discuss any issues regarding this application and can be contacted at the telephone number indicated below.

Respectfully submitted,

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